

## TESTIMONY TO THE PUBLIC HEALTH COMMITTEE

Senate Bill 419 AN ACT PROHIBITING SMOKING IN REGULATED AREAS OF CASINOS.

By Douglas Luckerman, Esq.

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My name is Douglas Luckerman. I am an attorney specializing in federal Indian law. My office is located in Lexington Massachusetts. I have spent a significant amount of time over the past 17 years looking at and analyzing Tribal sovereignty issues and the relationship between Tribal and State governments.

I would like to provide comments on the proposed smoking ban because I see significant jurisdictional and contractual issues raised by the proposed bill as it relates to the Mohegan Tribe.

First and foremost I see a problem with a State legislature attempting to regulate another sovereign government. It is a well established principle of federal law that Tribal governments retain all sovereignty and jurisdiction over their lands and people not specifically withdrawn by treaty or statute.

On March 15, 1994, the Secretary of the Interior granted federal recognition to the Mohegan Tribe. Federal recognition is an acknowledgement by the United States of the past and present sovereign status of that Tribal government. Federal Courts have long accepted that the United States' acknowledgement of the sovereignty of a tribal government reflects the recognition that such government has sovereign authority independent and distinct from any of the 50 States and that such Tribal government is not subject to the authority of any State absent agreement or abrogation by Congress.

The Mohegan Tribe did not give up its civil or criminal jurisdiction nor did Congress take that authority from the Tribe when it settled its land claim. This was confirmed by Senator Inouye in his report to Congress on the terms of the Mohegan Settlement Act, wherein he stated:

"The Mohegan Tribe will retain exclusive civil jurisdiction within the boundaries of its reservation, and will have concurrent criminal jurisdiction, on tribal lands and over tribal members, with the State of Connecticut."

The Mohegan Tribe has its own government, constitution, legislative and regulatory process. The Tribe's Constitution provides for the governance of the Tribe by a Tribal Council.

The Tribal council has created necessary governmental entities and Codes to meet the needs of the Tribe, such as: The Mohegan Environmental Protection Department, Police Department,

Tribal Utility Authority, Gaming Authority, Uniform Commercial Code, Building Code, Fire Code, Child Care Center Code, Firearms Code, Torts Code, and a Motor Vehicle Code.

I imagine the members of the Mohegan government and the Tribe would prefer to be governed by their own laws and procedures, rather than an outside government, just like the legislators in this room. It is accepted around the world that sovereign governments are entitled to make decisions according to their own rules and procedures, likes and dislikes. We respect their decisions, even if we do not agree with them. Enacting legislation solely designed to restrict the rights of another sovereign is wholly outside the rights of this State, regardless of the motivation for the intrusion.

Even under the Tribe- State Compact this bill faces significant hurdles. One, is that the Compact is an agreement between two sovereigns that has the force of federal law and it sets out very specific rights both parties.

Although the Compact says that the service of liquor is subject to state law, it also expressly provides the Tribe is "entitled" to a liquor license. Blacks law dictionary defines "entitled" as "to grant a legal right" Yet, the State is acting unilaterally to encumber or remove the Tribes legal right to a liquor license outside the Compact and without negotiation or consultation.

I encourage the State to reconsider its action to avoid unnecessary confrontation and enter into discussions to address its concerns on a government to government basis. Thank you.